IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1940 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PRASHANT PROTEINS LTD.

Versus

ASANNIKUMAR RAMRATAN

Appearance:

1. Special Civil Application No. 1940 of 1992

MR MANISH R BHATT for Petitioner

MR TR MISHRA for Respondent

CORAM : MR.JUSTICE J.M.PANCHAL

Date of decision: 16/09/2002

ORAL JUDGEMENT

By filing this petition under Articles 226 & 227 of the Constitution, the petitioner has challenged

legality of Award dated December 4, 1995, rendered by the Labour Court, Bhavnagar, in Reference (LCB) No.359/1987, by which the petitioner is directed to reinstate the respondent in service with full back wages.

2. The respondent was employed on permanent basis by the petitioner with effect from January 1, 1984, and it was his case that the petitioner was deducting some amount from his salary towards the Employees' State Insurance Scheme. According to the respondent, he was never issued any identity-card or wage-slip or presence card, though required by the provisions of the Factories Act, and because he had taken part in Union activities, his services were terminated on March 16, 1985, without following the provisions of the Industrial Disputes Act, 1947. Under the circumstances, he made an application to the Assistant Labour Commissioner, Bhavnagar and claimed reinstatement in service. On failure of conciliation proceedings, the Assistant Labour Commissioner, Bhavnagar referred the dispute regarding reinstatement of the respondent in service with back wages, to the Labour Court, Bhavnagar for adjudication, where it was numbered as Reference (LCB) No. 359/1987.

3. The Statement of Claims was filed by the respondent at Exh.4 to which reply was filed by the petitioner. In support of the averments made in the Statement of Claims, the respondent examined himself at Exh. 6 and also examined two other witnesses, namely, Rameshkumar Hiralal Shah at Exh.7 and Jayantibhai Dayalbhai at Exh.8. The case of the present petitioner in its Written Statement was that the respondent had served only in the months of May & June, 1984 and was, therefore, not entitled to the relief of reinstatement with back wages. In support of its case, the petitioner examined Harsukhbhai Mohanlal Gondalia at Exh.14 and Ashokkumar Manilal Shah at Exh.13. During the pendency of Reference before the Labour Court, it was declared by Mr. Harsukhbhai Gondalia that except the documents, which were produced on October 26, 1988, no other documents were available in the Factory of the petitioner. However, this statement was not found to be correct by the Labour Court because the petitioner itself had submitted an application at Exh.14 and requested the Labour Court to admit the documents which were produced by it on the record of Reference (LCB) No. 333/1987, but no document could be produced by the petitioner on the record of Reference (LCB) No. 359/1987, in which the Labour Court was adjudicating the dispute regarding validity of termination of services of the respondent. Under the circumstances, the Labour Court raised an

adverse inference against the petitioner and has accepted the case of the respondent. It is found by the Labour Court that before terminating the services of the respondent, the petitioner had not followed the provisions of Section 25F of the Industrial Disputes Act, 1947 and the termination of services of the respondent was illegal. Therefore, by the impugned Award the Labour Court has directed the petitioner to reinstate the respondent in service with back wages, giving rise to the present petition.

4. Mr.M.R.Bhatt, learned Counsel for the petitioner submitted that in order to establish his case that the respondent was employed on January 1, 1984 and that he had worked upto March 16, 1985, no evidence was led by the respondent and thus, the respondent having failed to discharge the burden of proof lying on him, the case pleaded by him should not have been accepted by the Labour Court. According to the learned counsel for the petitioner, the record shows that the respondent was employed as a daily wager on May 8, 1984; whereas he had stopped attending the work since June 26, 1984 and, therefore, the provisions of Section 25F of the Act were not attracted to the facts of the present case. The learned counsel emphasised that as the respondent had initiated proceedings for his reinstatement in service after unexplained delay and as a daily wager would not remain unemployed, the Labour Court was not justified in directing the petitioner to reinstate the respondent in service with back wages and, therefore, in any view of the matter, that part of the Award by which the petitioner is directed to pay full back wages should be suitably modified. In support of his submissions, the learned counsel has placed reliance on the decision of the Supreme Court in Range Forest Officer v. S.T.Hadimani (2002) 3 SCC 25.

5. Mr.T.R.Mishra, learned counsel for the respondent submitted that on appreciation of evidence adduced by the parties, the Labour Court has come to the conclusion that the respondent had put in more than 240 days of continuous service and that before terminating his services, the petitioner had failed to comply with the provisions of Section 25F of the Act and, therefore, the just award of the Labour Court should not be interfered with by the Court while hearing a petition which is essentially filed under Article 227 of the Constitution.

6. I have considered the submissions advanced at the Bar and the documents forming part of the petition. From the record of the case,it is evident that the respondent

has proved his case that he was employed on January 1, 1984 and that his services were terminated on March 16, 1985 by examining himself as well as by the evidence of two witnesses, namely, Rameshkumar Hiralal Shah examined at Exh.7 and Jayantibhai Dayalbhai examined at Exh.8. Though it was the case of the petitioner that the respondent was employed as a daily wager since May 1984 and had abandoned the work on June 29, 1984, no documentary evidence could be produced to substantiate the said case. Having regard to the facts of the case, I am of the view that the Labour Court was justified in drawing an adverse inference against the petitioner under the provisions of Section 114(e) of the Indian Evidence Act. At this stage, it is relevant to notice that the case of the respondent was that he was never issued any wage-slip or identity-card or card indicating his presence and, therefore, he could not have produced any documentary evidence in support of his case, but the petitioner, which is supposed to maintain official records under the provisions of the Factories Act and the other relevant laws, was expected to produce the documents before the Labour Court in support of its case pleaded in the written statement. In Range Forest Officer (supra), the case of the claimant was that he had worked for 240 days in a year. The said claim was denied by the appellant. The claimant had not led evidence to show that he had, in fact, worked for 240 days in the year preceding his termination, but filed merely an affidavit, on the basis of which a finding was recorded by the Labour Court to the effect that he had worked for 240 days in a year. The Supreme Court has held that filing of affidavit can hardly be regarded as 'sufficient evidence' for any Court or Tribunal to come to the conclusion that a workman had, in fact, worked for 240 days in a year. I am of the view that the principle laid down in the said decision cannot be made applicable to the facts of the present case because not only the respondent-workman had examined himself on oath and offered himself for cross-examination, but had also examined two other workmen in support of his case which was pleaded in the Statement of Claims. On overall view of the matter, I am satisfied that the Labour Court was justified in recording a finding that it was established by the respondent that he was employed on January 1, 1984 and that his services were terminated on March 16,1985. It is not the case of the petitioner that before terminating the services of the respondent, provisions of Section 25F of the Industrial Disputes Act, 1947 were complied with. Therefore, the finding that termination of services of the respondent was illegal, being eminently just, is hereby upheld. Having regard to the

totality of the facts and circumstances of the case, I am of the view that the direction given by the Labour Court to the petitioner to reinstate the respondent in service, cannot be regarded as illegal and is not liable to be interfered with in the present petition, which is filed under Article 227 of the Constitution.

7. Coming to the question of back wages, I find that it is an admitted position that the respondent was employed as a daily wager and was not a permanent employee. He would get the work as and when it is available. The respondent being daily wager, must have gainfully employed himself during the interregnum period. Under the circumstances, I am of the opinion that the Labour Court was not justified in directing the petitioner to pay 100% back wages to the respondent. On the facts and in the circumstances emerging from the record of the case, I am of the view that interest of justice would be served if the petitioner is directed to reinstate the respondent in service with 50% back wages.

For the foregoing reasons, the petition partly succeeds. The direction given by the Labour Court to the petitioner to reinstate the respondent in service is upheld. It is held that the respondent would be entitled to 50% of back wages and to that extent the impugned Award stands modified. Accordingly, rule is made absolute to the extent indicated hereinabove with no order as to costs.

(J.M.Panchal, J.)

(patel)